

**United States Department of Labor
Employees' Compensation Appeals Board**

E.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Vienna, VA, Employer**

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**Docket No. 17-1765
Issued: January 24, 2018**

Appearances:

*Stephen D. Scavuzzo, Esq., for the appellant*¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 10, 2017 appellant, through counsel, filed a timely appeal from a February 17, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish an emotional condition on February 2, 2015 causally related to the accepted employment incident.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.³ The facts as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 5, 2015 appellant, then a 57-year-old sales and service associate, filed a traumatic injury claim (Form CA-1) alleging that a mentally disabled young man, between 16 to 18 years old and six feet tall, entered the back of the clerk's window counter and hugged her on February 2, 2015. She alleged that as a result of this incident she suffered stress and that her "heart was pounding continually."

By decision dated March 30, 2015, OWCP denied appellant's claim as she had not submitted any medical evidence containing a medical diagnosis in connection with the accepted employment incident.

On April 19, 2015 appellant requested a hearing before an OWCP hearing representative. By decision dated September 30, 2015, the hearing representative denied modification of the March 30, 2015 decision.

Appellant appealed to the Board on March 26, 2016. By decision dated September 2, 2016, the Board denied appellant's claim. The Board noted that appellant had not submitted a well-rationalized report from a physician establishing that her diagnosis of post-traumatic stress disorder (PTSD) was causally related to the accepted February 2, 2015 employment incident. In reaching its conclusion, the Board found that the reports from Dr. Wonsock Shin, appellant's treating Board-certified internist, did not contain a description of the February 2, 2015 incident, nor did Dr. Shin offer any opinion addressing causal relationship. The Board further found that although Dr. Hei-Jung C. Kim, appellant's treating Board-certified psychiatrist, submitted a report that was generally supportive of causal relationship, he did not provide adequate medical rationale explaining the basis of his opinion.⁴

On November 21, 2016 appellant requested reconsideration of the Board's September 2, 2016 decision. She argued that she did not have a history of anxiety and had never seen a psychiatrist prior to February 2, 2015. Appellant alleged that her life had changed drastically since the incident and that she now suffered from depression and was unable to do things she had done previously.

In support of her reconsideration request, appellant submitted a September 12, 2016 report wherein Dr. Kim diagnosed her with PTSD, depression, and anxiety. Dr. Kim noted that appellant's current symptoms included physical tension, flashbacks, palpitations, overall hypervigilance, anxiety, difficulty focusing, and heightened irritability. He noted that treatment included weekly psychotherapy and medication management. Dr. Kim noted that, while appellant had experienced depressive and or anxious episodes in the past, it never interfered with her work performance or day-to-day personal function, and it was only after the incident of

³ Docket No. 16-0900 (issued September 2, 2016).

⁴ *Id.*

February 2, 2015 that she became unable to function at work or home. He opined that the incident at her job definitely caused appellant's PTSD. Dr. Kim noted that appellant had gradually desensitized to the triggers/stimuli over time, but that she was still limited to work away from the customer service area. He concluded that it was unclear when she would be able to fully reengage with face to face customer service.

In an October 7, 2016 report, Dr. Shin described the employment incident of February 2, 2015. He noted that the incident of that day led to appellant's emotional distress afterwards. Dr. Shin also noted that before this incident appellant had no history of psychiatric counseling or illness, nor did she have a history of palpitation and chest pain. He noted that after the incident she started having chest palpitation, chest pain, and insomnia. Dr. Shin opined that there was causal relationship between the accepted employment incident and the symptoms she started to experience on February 2, 2015. He opined that emotional distress from the incident was the reason for appellant's anxiety, palpitation, and chest pain. Dr. Shin concluded that the traumatic injury of February 2, 2016 caused her PTSD.

By decision dated February 17, 2017, OWCP denied modification of the September 2, 2016 decision,⁵ finding that the medical evidence of record was insufficient to establish the claim.

LEGAL PRECEDENT

An employee seeking compensation under FECA⁶ has the burden of proof to establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,⁷ including that he or she is an employee within the meaning of FECA and that the claim was filed within the applicable time limitation.⁸ The employee must also establish an injury in the performance of duty as alleged and that any disability from work, if any, was causally related to the employment injury.⁹

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment

⁵ Although appellant requested reconsideration of the Board's September 2, 2016 decision, OWCP is not authorized to review Board decisions. The decisions and orders of the Board become final after 30 days as to the subject matter appealed, and such decisions and orders are not subject to review, except by the Board. 20 C.F.R. § 501.6(d). Although the September 2, 2016 Board decision was the last merit decision, the hearing representative's September 30, 2015 decision is the appropriate subject of possible modification by OWCP.

⁶ *Supra* note 2.

⁷ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁸ *R.C.*, 59 ECAB 427 (2008).

⁹ *Id.*, *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.¹⁰

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the employment incident identified by the claimant.¹¹

ANALYSIS

The issue presently in this case is whether appellant's diagnosed conditions resulted from the accepted employment incident. The Board finds that appellant has failed to meet her burden of proof to establish a causal connection between the conditions for which compensation is claimed and the accepted employment incident.

The Board's review of the previously submitted medical evidence of record is *res judicata* absent any further review by OWCP under section 8128(a) and therefore the prior evidence need not be addressed again in this decision.¹²

Following the Board's September 2, 2016 decision, appellant submitted two new medical reports.

In a September 12, 2016 report, Dr. Kim listed appellant's diagnoses as PTSD, depression, and anxiety. He noted that she had depressive and/or anxious episodes in the past, but these episodes never interfered with her work performance and that it was only after the work incident of February 2, 2015 that she became unable to function at work or home. Dr. Kim opined that the incident at appellant's job definitely caused her PTSD. However, his report of September 12, 2016 did not provide a description of the February 2, 2015 job incident. Dr. Kim's opinion, therefore, cannot be found to be based on a proper factual background.¹³ Furthermore, although his report is generally supportive of causal relationship, he did not provide adequate medical rationale explaining the basis of his opinion regarding causal relationship. A mere conclusion without the necessary rationale explaining how and why the physician believes that the accepted incident caused the diagnosed condition is not sufficient to meet a claimant's burden of proof.¹⁴

In an October 7, 2016 report, Dr. Shin noted that on February 2, 2015 a mentally disabled young man entered in the backside of the clerk's window counter and hugged her, and that as a

¹⁰ *T.H.*, 59 ECAB 388 (2008).

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹² *E.L.*, Docket No. 16-0635 (issued November 7, 2016). See *A.T.*, Docket No. 16-0738 (issued May 19, 2016).

¹³ *Supra* note 11.

¹⁴ *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

result of that incident she suffered serious stress. He noted that before that incident appellant never had a history of anxiety problems and had no history of psychological counseling or illness. Dr. Shin noted that, since her symptoms occurred after this incident, it was sufficient to say that there is causal relationship between the employment incident and the symptoms she began to experience on February 2, 2015. He opined that emotional distress from the incident was the reason for her anxiety and pain, and that her traumatic injury was the cause of her PTSD. Dr. Shin's report is also insufficient to establish causal relationship. He indicated that appellant never had anxiety problems and no history of psychological counseling or psychiatric illness prior to the February 2, 2015 employment incident. However, Dr. Kim noted in his September 12, 2016 report that appellant had prior episodes, and that these episodes were detailed in his July 31, 2015 report. An opinion of a physician must be based on a complete and accurate factual background of the claimant.¹⁵ As Dr. Shin's opinion did not accurately reflect appellant's history, it is of diminished probative value.

A medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.¹⁶ To be of probative value the medical evidence must contain a sufficient explanation of the process through which the accepted employment incident physiologically caused or aggravated appellant's diagnosed condition.¹⁷ Medical conclusions unsupported by rationale are of little probative value.¹⁸ As appellant has not submitted any rationalized medical evidence which explains how and why the accepted employment incident physiologically caused or aggravated her diagnosed conditions, she has failed to meet her burden of proof to establish a claim for compensation.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an emotional condition on February 2, 2015 causally related to the accepted employment incident.

¹⁵ *R.B.*, Docket No. 16-1700 (issued September 25, 2017).

¹⁶ *Yvonne R. McGinnis*, 50 ECAB 272 (1999).

¹⁷ *K.N.*, Docket No. 16-1900 (issued March 9, 2017).

¹⁸ *Supra* note 14.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 17, 2017 is affirmed.

Issued: January 24, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board